

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thanh-Tam Ho	Team: Team # 8	CCRB Case #: 200411275	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/09/2004 1:59 AM	Location of Incident: Trinity Ave. and E. 149th St.	Precinct: 40	18 Mo. SOL 5/9/2006	EO SOL 5/9/2006	
Date/Time CV Reported Tue, 11/09/2004 3:16 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/12/2004 9:15 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Christophe Eliopoulos	00000	913946	PSA 7
2. POM Michael Flower	27281	913948	PSA 7
3. POM Anthony Demonte	19559	925184	PSA 7
4. Officers			

Officer(s)	Allegation	Investigator Recommendation
A.LT Christophe Eliopoulos	Abuse: Lieutenant Christophe Eliopoulos stopped and questioned § 87(2)(b)	
B. Officers	Abuse: Officers searched § 87(2)(b)	
C. Officers	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	
D. Officers	Discourtesy: An officer spoke rudely to § 87(2)(b)	
E. Officers	Force: An officer struck § 87(2)(b) with a blunt instrument.	
F.POM Anthony Demonte	Force: Officer Anthony Demonte used physical force against § 87(2)(b)	
G.POM Michael Flower	Force: Officer Michael Flower used physical force against § 87(2)(b)	
H.LT Christophe Eliopoulos	Force: Lieutenant Christophe Eliopoulos used physical force against § 87(2)(b)	

### Synopsis

The CCRB received this complaint from IAB (Log No.04-33784) on November 12, 2004. In his IAB account, § 87(2)(b) stated that on November 9, 2004 near 149<sup>th</sup> Street and Trinity Avenue, two officers stopped and searched him. When § 87(2)(b) protested, an officer called him a “nigger” and told him to “shut the fuck up.” The officers cursed at § 87(2)(b) and, after § 87(2)(b) was handcuffed, the officers hit § 87(2)(b) in the head with a radio and punched him in the back. § 87(2)(b)'s CCRB statement contradicted his complaint to IAB. He told the CCRB that he was stopped and searched by three officers. When § 87(2)(b) attempted to make a phone call to his aunt, an officer said, “Didn’t I say don’t move? Shut the fuck up.” An officer hit him in the head with an unknown object before the officers put him on the ground. § 87(2)(b) felt blows all over his body and lost consciousness. § 87(2)(b) was taken to § 87(2)(b) and stated that, since the incident, he has back pain, headaches, trouble focusing, and his memory has worsened. § 87(2)(b) also stated that 3 of his teeth were knocked out during the incident. § 87(2)(b) did not think that he had a seizure during the incident, but medical documents from § 87(2)(b) note that § 87(2)(b) may have had a seizure.

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b)-old black male, was interviewed by IAB on November 9, 2004 (encls. 5a-g), and details of his IAB interview are as follows:

On November 9, 2004, § 87(2)(b) was leaving a store near 149<sup>th</sup> Street and Trinity Avenue when two officers, PO1 and PO2, stopped him and searched him. The officers did not find anything and § 87(2)(b) said, “Why you got me here? Let me know why I’m here.” PO1 said, “Nigger, did you say something smart? Shut the fuck up and turn against the wall.” § 87(2)(b) was put front first against the wall and PO1 asked § 87(2)(b) where he lived. § 87(2)(b) told him and PO1 asked him again and § 87(2)(b) repeated himself. PO1 said, “Where the fuck do you live?” § 87(2)(b) was searched again and at some point he gave the officers marijuana that he had on him. An officer told § 87(2)(b) to put his hands behind his head and § 87(2)(b) complied. An officer attempted to handcuff § 87(2)(b) and § 87(2)(b) said, “What the fuck you doing? I’ve already given up. Why you handcuffing me?” An officer said, “Shut the fuck up,” and § 87(2)(b) was handcuffed. An officer hit him in the head with a radio and both officers punched him and hit him in the back. At some point the officers called for backup.

§ 87(2)(b) was interviewed by the CCRB on February 16, 2005 at § 87(2)(b)

§ 87(2)(b) (encls. 8a-c), and details of the interview are as follows:

§ 87(2)(b) was on Trinity Avenue near 149<sup>th</sup> Avenue when an officer, PO1, ran towards him and told him to freeze. § 87(2)(b) stopped and PO1 told § 87(2)(b) to put his hands on a nearby gate. § 87(2)(b) complied and PO1 patted down § 87(2)(b) and searched the pockets in which § 87(2)(b) had objects. Two officers, PO2 and PO3, arrived and searched § 87(2)(b) in the same manner. An officer took § 87(2)(b)'s money out of his coat pocket, but did not find anything else on him. An officer stated that they were going to take § 87(2)(b) to the precinct and § 87(2)(b) said, “Why?” None of the officers responded and § 87(2)(b) said, “Hold on, let me call my aunt because you guys are harassing me.” § 87(2)(b) had his phone in his hands and flipped open his phone. One of the officers said, “Didn’t I say don’t move? Shut the fuck up,” and hit § 87(2)(b) in his right temple with an unknown object. § 87(2)(b) fell to the side and an officer grabbed his arms and put him to the floor. § 87(2)(b) felt a couple more blows to his head and body. An officer got on top of § 87(2)(b) and tried to put § 87(2)(b)'s arm behind his

back, and also hit § 87(2)(b) in the back of his head and his left temple. § 87(2)(b) was struck in the mouth, but did not know how it occurred. § 87(2)(b) felt woozy after being initially struck in the head and it was difficult for him to know what was happening. § 87(2)(b) did not do anything to resist the officers and eventually lost consciousness.

§ 87(2)(b) woke up in § 87(2)(b) and IAB came to interview him. § 87(2)(b) was given x-rays at the hospital, but could not remember any other treatment that they gave him. § 87(2)(b) stated that his memory has been worse after the incident and he has trouble focusing and often has headaches. § 87(2)(b)'s front 3 teeth were kicked out and his lip was cut during the struggle. § 87(2)(b) also has back pain from the incident. § 87(2)(b) did not think he had a seizure during the incident and stated that he does not have a medical history of seizures.

§ 87(2)(b) described the officers as follows:

PO1: Hispanic or White male, in uniform

PO2: male

PO3: male, light complexion, § 87(2)(b) thought he heard PO1 and PO2 refer to PO3 as "lieutenant"

### **Results of Investigation**

#### **Attempts to Interview Other Civilian Witnesses**

§ 87(2)(b) believed that neighbors of his aunt, § 87(2)(b) witnessed the incident. On February 22, 2005, § 87(2)(b) stated that a woman had told her that she had witnessed the incident, but she does not have any contact information for this woman and refused to give her name. A canvass on February 16, 2005 did not produce any results (encl. 9a).

#### **Officer Statements**

##### **Officer Anthony Demonte, Officer Michael Flower and Lieutenant Christopher Eliopoulos**

Officer Demonte, a § 87(2)(b) old, 6'4" tall White male weighing 275lbs, made a note of the incident in his memobook (encls. 10a-c). Officer Demonte reported his injuries in an aided report worksheet (encls. 22a-b) and line of duty worksheet (encl. 24a-b), which note that Officer Demonte received a laceration to his neck and substantial pain to his left shoulder while handcuffing § 87(2)(b). Officer Demonte filled out an assault report (encl. 23a-b) which notes that while officers were attempting to handcuff him, § 87(2)(b) flailed his arms at officers, punched and kicked them, and struck an officer in the face with an unknown object causing a laceration to his neck. Officer Demonte also filed out witness statements to MOS injury reports (encls. 30a, 33a), which note that Officer Demonte witnessed Lieutenant Eliopoulos complain of lower back pain after struggling with § 87(2)(b) and witnessed Officer Flower injure his left hand while arresting § 87(2)(b). Officer Flower, a § 87(2)(b) old, 5'8" tall White male weighing 200lbs, made a note of the incident in his memobook (encls. 12a-d). Officer Flower filled out a line of duty injury report which notes that § 87(2)(b) punched and kicked the officers, causing Officer Flower to sustain a swollen and red hand, and pain to his right knee and lower back (encl. 31a). Officer Flower filled out witness statements to MOS injury reports (encl. 25a, 29a) which note that he witnessed Lieutenant Eliopoulos complain of lower back pain after arresting § 87(2)(b) and Officer Demonte receive an injury to his chin during the arrest of § 87(2)(b). Lieutenant Christopher Eliopoulos, a § 87(2)(b) old, 5'8" tall White male weighing 180lbs, made a note of the incident in his memobook (encls. 11a-c). Lieutenant Eliopoulos filled out an aided report which notes that he sustained a lower back "sprain" while struggling with § 87(2)(b) (encl. 27a-b). Lieutenant Eliopoulos filled out an assault report which notes that he received an injury to his back while attempting to place § 87(2)(b) into custody (encl. 28a). Lieutenant Eliopoulos filled out a line of duty injury report (encl. 28b) which notes that § 87(2)(b) fought arrest by swinging his fists and kicking his feet. All three officers fell to the ground, which caused Lieutenant Eliopoulos an injury to his lower back. Lieutenant Eliopoulos filled out witness statements to MOS injury reports (encl. 26a, 32a) which note that Lieutenant Eliopoulos witnessed Officer Demonte receive an injury to his chin and Officer Flower receive an injury to his left hand while arresting § 87(2)(b). § 87(2)(g)

On November 9, 2004 at around 1:55AM, Officer Anthony Demonte, Officer Michael Flower, and Lieutenant Christopher Eliopoulos arrived at the housing development at Trinity Ave. and E. 149th St. and exited their car to patrol the area. They saw § 87(2)(b) in the park of the development and Lieutenant Eliopoulos directed the officers to approach § 87(2)(b) and stop him, as persons are prohibited from entering the park after dusk. Officer Flower asked § 87(2)(b) why he was in the park and § 87(2)(b) gave inconsistent answers as to why he was in the park, where he lived, and where he was going. Officer Demonte noted that § 87(2)(b) turned one side of his body away from the officers as if to hide something, and spontaneously told the officers, "I don't have anything on me." Lieutenant Eliopoulos thought § 87(2)(b)'s evasive answers and "skittish" behavior was indicative of drug use. § 87(2)(b) did not have any identification and the officers decided to take § 87(2)(b) to the precinct to issue him a summons for his illegal presence in the park.

Officer Flower told § 87(2)(b) that he was going to handcuff and § 87(2)(b) pushed Officer Flower and Lieutenant Eliopoulos in their torsos and then ran towards Officer Demonte and pushed him in the torso. Officer Flower stated that § 87(2)(b) also punched him in the head and chest at this time. Officer Demonte grabbed § 87(2)(b)'s jacket and § 87(2)(b) moved one of his hands across Officer Demonte's neck and caused a 4-inch abrasion to Officer Demonte's neck with an unknown object. Officer Demonte, Officer Flower and Lieutenant Eliopoulos tried to hold on to § 87(2)(b)'s arms and body as he tried to run away and all of them fell onto the hood of a parked car. Officer Demonte and Officer Flower fell on top of § 87(2)(b) and Officer Demonte told § 87(2)(b) numerous times to stop resisting. § 87(2)(b) punched Officer Demonte all over his body numerous times and Officer Demonte tried to deflect § 87(2)(b)'s punches with his forearms. At one point, while trying to deflect a punch, Officer Demonte's forearm and hand came into contact with § 87(2)(b) but Officer Demonte did not know where. § 87(2)(b) struck Officer Demonte's thigh with his leg and knee and punched Officer Flower. Officer Flower also tried to protect himself from § 87(2)(b)'s punches, but Officer Demonte did not know how or if Officer Flower ever struck § 87(2)(b). § 87(2)(b) kicked Lieutenant Eliopoulos in the leg a couple times.

§ 87(2)(b) and the officers fell about two feet from the hood of the car to the ground, with Officer Flower directly on the ground, § 87(2)(b) on top of him and Officer Demonte on top of both of them. § 87(2)(b) continued to punch and refuse to place his arms behind his back and the officers finally managed to put § 87(2)(b) in handcuffs. None of the officers ever hit § 87(2)(b) with a radio. None of the officers used profanity and none of them called § 87(2)(b) a "nigger."

Officer Demonte realized that his neck was bleeding when he got off the ground. § 87(2)(b)'s whole body started to shake in a way that made Officer Demonte believe that he was having a seizure. § 87(2)(b) did not respond when the officers asked him if he was okay. Officer Demonte called an ambulance and tried to aid § 87(2)(b) by making sure that his breathing passageways were not obstructed by clothing and made sure that he remained out of the street. Officer Flower and Lieutenant Eliopoulos did not believe that § 87(2)(b) was having a seizure, but stated that § 87(2)(b) appeared "out of it." None of the officers observed any other injuries on § 87(2)(b). § 87(2)(b) was put into the ambulance and a bag of uncut crack cocaine, marijuana and money were on the ground where § 87(2)(b) had lay. Officer Demonte, Officer Flower and Lieutenant Eliopoulos never searched § 87(2)(b) as he had a seizure after he was handcuffed. The officers were taken to § 87(2)(b), § 87(2)(b)

#### Medical Documents for § 87(2)(b)

The **medical treatment of prisoner form** (encl. 13a) notes that § 87(2)(b) received a bump on his head sometime during an altercation. § 87(2)(b) was admitted to § 87(2)(b)

The **FDNY ambulance call report** (encls. 15a-j) notes that an officer stated that § 87(2)(b) was resisting arrest and became unconscious during the struggle. One of the officers believed that § 87(2)(b) had a seizure. § 87(2)(b) was found by EMS lying on the ground and was unconscious. He had trauma to his right forehead, but no neck, back, chest or abdomen trauma were observed.

**Medical records from § 87(2)(b)** (encls. 16a-vvv) note that § 87(2)(b) was admitted to § 87(2)(b) in police custody, having suffered head trauma as a result of an altercation with the police. § 87(2)(b) was unconscious upon admittance, and accounts of his altercation with the police are attributed to an unknown police officer.

The triage assessment form notes that § 87(2)(b) was lethargic and unresponsive to verbal stimuli. It also notes “possible seizure” and head trauma to the forehead. § 87(2)(b) was given 15ml of tetanus and further records note that § 87(2)(b) was intubated.

A narrative written by § 87(2)(b) on § 87(2)(b), notes that § 87(2)(b) was hit in the head and on the body with a nightstick by a police officer and had a seizure after being hit. It notes that § 87(2)(b) was unconscious and unresponsive on this date, and had a contusion on his right forehead and frontal region, and blood around one of his ears. The narrative does not note from whom § 87(2)(b) received the information regarding how § 87(2)(b) sustained his injury.

The physical examination of § 87(2)(b) notes that § 87(2)(b) had contusions on his left and right temples, and had been intubated. § 87(2)(b)'s extremities were twitching and his eyes were dilated and sluggish.

Cat scans of his head, neck, spine, pelvis and abdomen returned negative results.

The progress record note that drugs were allegedly found on § 87(2)(b) by the officers that accompanied him to the hospital. At § 87(2)(b), § 87(2)(b) was conscious and became frantic to his wish to have the intubation tube removed. § 87(2)(b) was sedated and given wrist restraints to prevent him from taking out the tube. At § 87(2)(b), he was diagnosed as “doing well” and the tube was removed. As the day progressed, § 87(2)(b) was able to eat and move from his bed. § 87(2)(b) remained in the hospital to monitor his progress and on § 87(2)(b), the progress reports note that § 87(2)(b) was not suffering from amnesia. § 87(2)(b) was discharged on § 87(2)(b) and stated that he did not have any headaches or dizziness.

The **pre-arraignment screening form** notes that § 87(2)(b) was treated and released for a concussion and minor swelling with an abrasion to his right forehead (encl. 17a).

**Medical documents from Correctional Health Services** (encls. 18a-mm) note that § 87(2)(b) complained of trauma to the head, back pain, headaches and toothaches as a result of an assault. § 87(2)(b) had an abrasion to his forehead and claimed that he had lost teeth as a result of the assault. He was given Motrin/Tylenol for musculoskeletal pain.

#### **Medical records for Officer Demonte**

**Medical records from § 87(2)(b)** (encls. 19a-i) note that on November 9, 2004, Officer Demonte was treated for § 87(2)(b)

#### **IAB call-out report**

The IAB call-out report (encls. 34a-i) notes that on November 9, 2004, Sergeant John Slevin went to § 87(2)(b) to interview § 87(2)(b). Doctors informed Sergeant Slevin that § 87(2)(b) sustained contusions to his head and had been sedated and incubated upon arrival at the hospital, due to possible seizure activity and combative behavior. A cat scan did not reveal any fractures.

### 911 and radio run transcripts

The CCRB obtained the communications recording of the **911 calls and radio runs** associated with the incident (encls. 20a-d). The 911 call is a call from an unknown female who states that officers are beating up a man. The **Sprint Report** (encls. 20a-d) reveals the same and notes that 1 MOS was taken to Kings County Hospital for lacerations to the head.

### Police Documents

The **arrest photo** (encl. 21a) for § 87(2)(b) shows a scrape on § 87(2)(b) right forehead. The **BADS arrest report** (encl. 35a) and **UF-61 complaint and arrest reports** (encls. 36a-g) note that § 87(2)(b) possessed of a large white rock of alleged cocaine, 9 bags of alleged crack and 7 bags of alleged marijuana. When Officer Flower attempted to handcuff him, § 87(2)(b) kicked Officer Flower, punched him and cut Officer Demonte, causing a 4 inch laceration. A **property voucher** for § 87(2)(b) notes that § 87(2)(b) had 7 clear bags of marijuana, 9 small bags of crack, and 1 large crack rock (encl. 37a). **Roll call** (encls. 39a-b) shows that Lieutenant Eliopoulos, Officer Flower and Officer Demonte were on duty. The **command log** (encls. 38a-s) does not note § 87(2)(b)'s arrest.

### Complainants' criminal history

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Officers' CCRB History

Officer Flower was substantiated for use of discourteous language for an incident that occurred in 1992 (CCRB case no. 6292557). There were no recommendations and an OATH decision is not available for this case. Officer Flower was substantiated for the use of threat of force, discourteous language, and offensive language in CCRB case no. 9702061. Officer Flower was found not guilty by DCT. Officer Demonte was substantiated for use of physical force and for the entry and search of a premises in CCRB case no. 200207663. An OATH disposition is not available for this case. Officer Demonte was substantiated for use of physical force in CCRB case no. 200304215. An OATH disposition is not available for this case. Lieutenant Eliopoulos has never had a CCRB case substantiated against him.

## Conclusions and Recommendations

### Officer Identification

§ 87(2)(b) stated that he had difficulty remember specifics about the incident and was not able to describe anything about the officers other than their gender. § 87(2)(g)

### Undisputed Facts

It is undisputed that the officers stopped § 87(2)(b) and attempted to handcuff him. After § 87(2)(b) was handcuffed, § 87(2)(b) had a seizure.

### Disputed facts

§ 87(2)(g)

[REDACTED]

### Credibility analysis of civilians

§ 87(2)(g)

[REDACTED]

### Credibility analysis of officers

§ 87(2)(g)

[REDACTED]

### Determination of Fact

§ 87(2)(g)

[REDACTED]

### **Allegation A: Lieutenant Christopher Eliopoulos stopped and questioned § 87(2)(b)**

§ 87(2)(b) claimed that the officers stopped him for no reason, and the officers stated that they stopped

§ 87(2)(b) because he was in the park during prohibited hours. § 87(2)(g)

§ 87(2)(b) NYPD Training Curriculum notes that an officer may stop an individual when they have reasonable suspicion that the person is committing a crime (encls. 2b-e) § 87(2)(g)

[REDACTED]

**Allegation B: Officers searched § 87(2)(b)**

**Allegation C: An officer made remarks to § 87(2)(b) based upon race.**

**Allegation D: An officer spoke rudely to § 87(2)(b)**

**Allegation E: An officer struck § 87(2)(b) with a blunt instrument.**

§ 87(2)(b)'s account of the search by officers differs in his IAB and CCRB accounts. In his IAB account, § 87(2)(b) claimed that two officers approached him and searched him twice, during which time the officers found marijuana on § 87(2)(b) and § 87(2)(b) gave the officers money. In his CCRB account, § 87(2)(b) stated that three officers approached him, one by one, and all three officers searched him separately. Money was found on § 87(2)(b) but no drugs were found. § 87(2)(b) stated that an officer called him a “nigger” in his IAB account, but denied that this occurred in his CCRB account. § 87(2)(b) claimed that an officer hit him with a radio in his IAB account, but stated that he did not know what he was hit with in his CCRB account. The officers denied that any of this occurred. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation F: Officer Anthony Demonte used physical force against § 87(2)(b)**

**Allegation G: Officer Michael Flower used physical force against § 87(2)(b)**

**Allegation H: Lieutenant Christopher Eliopoulos used physical force against § 87(2)(b)**

§ 87(2)(b) was admitted to the hospital after his struggle with the officers and, according to hospital records, sustained head trauma and a “possible” seizure (encls. 14a). In his CCRB interview, § 87(2)(b) stated that officers hit him in the head with an unknown object and punched him all over his body. The officers denied this, and stated that § 87(2)(b) had struggled violently with them and punched, kicked, pushed and cut them, before they and § 87(2)(b) all fell from the hood of a car to the ground. After the fall, Officer Demonte observed § 87(2)(b) shake and become unresponsive in a manner that made Officer Demonte believe that § 87(2)(b) was having a seizure. All three officers received injuries from the struggle. § 87(2)(g)

The NYPD Training Curriculum notes that officers may use impact techniques such as “batons, fists and feet” when an individual presents “physical assault likely to cause physical injury” (encl. 2a). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: